

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

| | | |
|--|---|--------------------|
| Midwest Operating Engineers Welfare |) | |
| Trust Fund and Midwest Operating |) | |
| Engineers Pension Trust Fund, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | Case No. 15 C 4446 |
| v. |) | |
| |) | |
| Cordova Dredge, a division of RiverStone |) | |
| Group, Inc., an Illinois corporation, |) | |
| |) | |
| Defendant. |) | |

MOTION TO ENTER JUDGMENT

Plaintiffs Midwest Operating Engineers Welfare Trust Fund and Midwest Operating Engineers Pension Trust Fund (collectively, “the Funds”), move to enter judgment for unpaid contributions owed, interest, liquidated damages, costs, and attorneys’ fees under Section 515 of the Employee Retirement Income Security Act (ERISA) of 1974, 29 U.S.C. § 1145. In support of this Motion, the Funds state that:

1. On May 20, 2015, the Funds filed suit against Cordova Dredge for unpaid contributions, interest, liquidated damages, and attorneys’ fees and costs owed under a collective bargaining agreement with Local 150 of the International Union of Operating Engineers, AFL-CIO (“Local 150” or “the Union”), which was effective from May 3, 2010, through May 3, 2015 (Complaint ¶ 2, Ex. A, Doc. #1-1, filed 05/20/15, PageID #5-33).

2. On December 1, 2015, this Court entered its “Memorandum Opinion and Order,” denying the Funds’ Motion for Summary Judgment as to the preclusive effect of *Midwest Operating Engineers Welfare Fund, et al. v. Cleveland Quarry*, 40 F. Supp. 3d 1033, 1034 (N.D. 2014); but granting the Funds’ summary judgment “as it relates to Cordova’s liability for

contributions to the Funds under 29 U.S.C. § 1145” (Doc. #29, filed 12/01/15, at Page 32 of 32, PageID #1457).

3. Pursuant to the Court’s instructions, Cordova Dredge has reported to Fund counsel the hours worked by its employees from March 2015 through May 2015 (Exhibit A, Certification of Thomas M. Bernstein (hereinafter “Bernstein Cert.”), ¶ 3, Attachment 1). Counsel for Cordova Dredge has stated that the Company will stipulate to the accuracy of these hours worked.

4. Based upon the hours worked as reported by Cordova Dredge, the MOE Funds have calculated unpaid contributions owed for the entire timeframe to be \$18,710.03 (Ex. A, Bernstein Cert. ¶ 4).

5. Pursuant to Section 502(g) of ERISA, the Funds are entitled to recover interest on those unpaid contributions. 29 U.S.C. § 1132(g)(2)(B). The Funds have calculated interest based upon an annual rate of 8 percent to be \$935.40 (Ex. A, Bernstein Cert. ¶ 4).

6. Pursuant to Section 502(g) of ERISA, the Funds are entitled to liquidated damages not to exceed 20 percent. 29 U.S.C. § 1132(g)(2)(C)(ii). The Funds have calculated liquidated damages for the unpaid contributions in the amount of \$3,742.01 (Ex. A, Bernstein Cert. ¶ 4).

7. Pursuant to Section 502(g) of ERISA, the Funds are entitled to an award of reasonable attorneys’ fees and costs. 29 U.S.C. § 1132(g)(1). The Funds have incurred costs in this action in the total amount of \$400.00 (Ex. A, Bernstein Cert. ¶ 4).

8. The Funds have incurred attorneys’ fees in this action in the total amount of \$14,889.10 (Ex. A, Bernstein Cert. ¶ 5).

WHEREFORE, the Midwest Operating Engineers Welfare Trust Fund and the Midwest Operating Engineers Pension Trust Fund respectfully request that the Court enter judgment for unpaid contributions, interest, liquidated damages, and attorneys' fees and costs in the amounts set forth below (a Proposed Order to this effect is attached hereto as Exhibit B):

| | |
|--|--------------------|
| Unpaid contributions for hours worked March 2015 through May 2015: | \$18,710.03 |
| Interest on unpaid contributions based upon annual interest rate of 8 percent: | \$935.40 |
| Liquidated damages for unpaid contributions: | \$3,742.01 |
| Costs: | \$400.00 |
| Attorneys' fees: | \$14,889.10 |
| Total: | <u>\$38,676.54</u> |

Dated: December 9, 2015

Respectfully submitted,

By: /s/ Dale D. Pierson
One of the Attorneys for the Funds

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that on December 9, 2015, he electronically filed the foregoing with the Clerk of Court using the CM/CM/ECF system which sent notification to the following:

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